

# **Attachment A**

## **(Part 6 of 6)**

## **Part 2 of Exhibit 14**

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1 Yousef was convicted, as I said earlier, of acts he committed  
2 in the Philippines but he was also convicted, your Honor, of  
3 planning Plan Bojinka, which was a plan to hijack 12 jetliners,  
4 simultaneously crash them filled with people into the Pacific  
5 ocean, U.S. jetliners.

6 His coconspirator, who confessed, his name was Murad,  
7 your Honor, also confessed that one of the plans being  
8 considered was to hijack a United States jetliner and crash it,  
9 Mr. Murad was a trained pilot, into the CIA in Langley. These  
10 defendants were convicted in 1996, and judgment was entered in  
11 1998.

12 Your Honor, your predecessor in this case, before his  
13 unfortunate early demise, Judge Schwartz, handled the terrorist  
14 case and issued an order the week of his untimely death. It's  
15 the case called Talisman Energy. In Talisman Energy, Judge  
16 Schwartz discussed acts of terrorism and barbarity and torture.  
17 He called these acts the depths of depravity and spoke  
18 eloquently of the toll on human life taken by terrorism acts.

19 In the case, your Honor, of Kilburn v. Libya, decided  
20 three months ago by the D.C. Circuit, unanimously, the Court  
21 held that simple proximate cause is the operative standard  
22 under the FSIA. We discussed this last month before your  
23 Honor. The court held unanimously, your Honor, that you cannot  
24 impose a requirement that financial assistance to a terror  
25 organization be directly traceable to a particular terror act;

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1 that that would render the statute under which we're operating,  
2 the Antiterrorism Act, a similar provision, that would render  
3 ineffectual the material support provisions under which we are  
4 bringing our case. The court held, your Honor, "money, after  
5 all, is fungible, and terror organizations can hardly be  
6 counted on to keep careful bookkeeping records."

7 Your Honor, there's a case in D.C. that Mr. Carter's  
8 going to talk about named Pugh. It's highly important because  
9 it held, among other things, that it had been common knowledge  
10 amongst foreign nationals, amongst foreigners, these  
11 defendants, they didn't say these defendants, I mean  
12 foreigners, who are not residents of the United States, that  
13 the United States Government was serious about preventing and  
14 punishing terrorism worldwide, and it was common knowledge,  
15 since 1984, that the United States was targeting the funding  
16 and conduct of terrorism.

17 Your Honor, the Seventh Circuit and the Ninth Circuit,  
18 in cases dealing with terrorism of a different sort, found that  
19 there's no constitutional right to provide weapons and  
20 explosives and money to terrorists.

21 Your Honor, I would like to focus very briefly, if I  
22 might, on the statute that provides the basis, majority basis  
23 for our claims. It's called the Antiterrorism Act. It was  
24 enacted in 1992. And as the Boim Seventh Circuit case found,  
25 the legislation provides the imposition of liability at any

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1 point, at any point, on the causal chain to terrorism. To  
2 interrupt or at least imperil the flow of money. Aiding and  
3 abetting liability reaches persons who did not engage in the  
4 proscribed activities at all but who give a degree of aid to  
5 those who do.

6 Your Honor, in October of 2002, the prestigious  
7 Council on Foreign Relations made this finding about the  
8 funding of Al Qaeda. It was report-specific to that, and this  
9 is in the record: For years, individuals and charities based  
10 in Saudi Arabia have been the most important source of funds  
11 for Al Qaeda. For years, Saudi officials have turned a blind  
12 eye to this problem. The general counsel, your Honor, of the  
13 treasury department, different testimony from what I withdraw,  
14 Mr. David Aufhauser, called Saudi Arabia the epicenter of  
15 terrorism financing.

16 Now, if I might, your Honor, I'd like to spend a  
17 minute on what counsel has called the Golden Chain document.  
18 That's a misnomer. There is a cachet of documents, your Honor,  
19 of which they've only fastened upon one, which is a list of  
20 donors. The Soviet Union announced its intention to withdraw  
21 from Afghanistan in late 1998. Dr. Azzam created Al Qaeda  
22 along with Osama Bin Laden in the summer and early spring of  
23 1998, to continue Jihad in places other than Afghanistan. The  
24 people whose names are listed on there were donors of, to the  
25 jihad efforts in Afghanistan --

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1                   THE COURT: Is there anything in the record that  
2 identifies who the author of that document is?

3                   MR. MOTLEY: Not to my knowledge, your Honor.

4                   THE COURT: Is there anything in the record that  
5 identifies any donations from any of the names listed on that  
6 document?

7                   MR. MOTLEY: Yes, sir, your Honor. We have placed  
8 evidence, some of the people whose names are on that document  
9 are defendants whose motion is ripe before you.

10                  THE COURT: I didn't ask you that, Mr. Motley. I'd  
11 appreciate it if you'd respond to my questions.

12                  MR. MOTLEY: I'm sorry, your Honor. I thought I was  
13 doing so.

14                  THE COURT: Is there anything in that document that  
15 indicates that anybody on that document, anyone listed in the  
16 document made a specific donation?

17                  MR. MOTLEY: On that document, no.

18                  THE COURT: That document, Mr. Motley. Is your  
19 hearing impaired today?

20                  MR. MOTLEY: It's getting better, Judge. Thank you.

21                  THE COURT: Okay. I'll raise my voice if you have a  
22 problem.

23                  MR. MOTLEY: No, sir. I understand.

24                  THE COURT: Is there anything on that document?

25                  MR. MOTLEY: Not on that one document.

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THE COURT: Thank you. Okay. Continue.

2 MR. MOTLEY: As I was saying, your Honor, there are  
3 more than just that one document.

4 THE COURT: Do we even know when the document was  
5 written? Is there a date on it?

6 MR. MOTLEY: I personally do not know when it was  
7 written.

8 THE COURT: Is there a date on it?

9 MR. MOTLEY: No, sir.

10 THE COURT: Okay. Go ahead.

11 MR. MOTLEY: The documents, your Honor, were recovered  
12 by the FBI and the Bosnian police in a raid on a charity.

13 THE COURT: That's exciting, but it doesn't prove  
14 anything, does it, Mr. Motley?

15 MR. MOTLEY: Your Honor, we believe it does. The  
16 documents that were tendered --

17 THE COURT: We don't know who the author is, when it  
18 was written. It's very nice that the Bosnian police and the  
19 FBI, and I have the highest respect for them, found it. What  
20 is it? What does it prove, if none of these things are known?

21 MR. MOTLEY: Your Honor, I respectfully suggest that  
22 at this stage of the case, that we should be permitted the  
23 opportunity to bring back to your Honor the answers to those  
24 questions.

25 THE COURT: That's another question. My question is  
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1 at this moment in time: What does it prove?

2 MR. MOTLEY: Your Honor --

3 THE COURT: It's merely a piece of paper with names on  
4 it. Isn't it?

5 MR. MOTLEY: That one piece of paper with names on it  
6 is exactly what you say it is, but that's not the only document  
7 that was seized. It's not the only document that was submitted  
8 to Judge Robertson, pursuant to an order of the Bosnian Supreme  
9 Court. There are hundreds of documents that were seized, your  
10 Honor, and they're all set forth in the Department of Justice's  
11 proffer of evidence in the, in Chicago, in the case of Amen  
12 Arnaout.

13 THE COURT: That's all very interesting. But I didn't  
14 see anything in your papers or any of the other plaintiffs that  
15 says that this document was written by a particular individual,  
16 that it is a list of donations to Al Qaeda and how much, and  
17 when it was written. And whether you say, well, it's not on  
18 that document, is there a document that was seized at the same  
19 time that says, answers those questions? I don't think so.

20 MR. MOTLEY: I don't think --

21 THE COURT: Or you would have put it in, I'm quite  
22 sure.

23 MR. MOTLEY: I would have put it in, Judge.

24 THE COURT: I've read your papers very carefully,  
25 Mr. Motley.

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1 MR. MOTLEY: I think, your Honor, that those documents  
2 are not dated. The U.S. Government did the best they could to  
3 estimate when it was, and the estimate is in 1988. But it's  
4 not on the document. I confess, it's not on the document.

5 And that's one of the reasons why we want to do  
6 discovery. These are things that we can sort out if we're  
7 allowed to do discovery, and I respectfully suggest, your  
8 Honor, as Judge Robertson pointed out in Burnett I, I think we  
9 plant enough here that we should be entitled to do discovery of  
10 these defendants and come back to your Honor in a reasonable  
11 period of time with sounder and better and clearer answers to  
12 these important questions that you raise.

13 THE COURT: That's another matter. But I just want to  
14 be very clear on that document. You put great weight on it,  
15 and, when you come right down to it, you don't know when it is.  
16 Do we?

17 MR. MOTLEY: I'd like to find out, Judge.

18 THE COURT: I understand that.

19 MR. MOTLEY: And I can't answer your questions.

20 THE COURT: Okay.

21 MR. MOTLEY: Because the answers don't appear to those  
22 questions --

23 THE COURT: I just want to be sure of that.

24 MR. MOTLEY: You're absolutely, positively correct.

25 Your Honor, among those documents, not the list, but

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1 there's another document that sets forth what we call and what  
2 the government called in the Arnaout proffer the charity  
3 strategy of Al Qaeda, that they would use charities as the  
4 basis for raising money to finance Al Qaeda. That's one of the  
5 documents that we submitted to your Honor, through the Arnaout  
6 proffer. It's among the long list of documents that were  
7 seized in Bosnia.

8 Your Honor, I'd also point out the affidavit of  
9 Charles Pasqua, which we discussed with your Honor last time,  
10 Mr. Pasqua was the foreign minister, excuse me, interior  
11 minister of France. He submitted a declaration which we filed  
12 with your Honor about his specific visit to Saudi Arabia in  
13 1994 at which he advised, he says, among others, Prince Sultan  
14 that money was being raised in Saudi Arabia and diverted to  
15 these charities and being used to fund Al Qaeda. And he  
16 specifically listed in his affidavit one of the defendants in  
17 this case, although not a defendant whose motion is before you  
18 today. That would be the Muslim World League.

19 Your Honor, we also submitted an affidavit in this  
20 record of Mr. William Wechsler. Mr. Wechsler was a senior  
21 official in the Clinton Administration, who was chairman of the  
22 interagency working group tasked with disrupting Al Qaeda's  
23 financial network, and he and Mr. Rick Newcombe, for the  
24 Department of Treasury, visited Saudi Arabia in 1999 and  
25 specifically sat down with senior members of the government and

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2 their banking authorities and again told them that wealthy  
3 Saudi businessmen were financing charities which were then  
3 diverting the funds to Al Qaeda.

4 In 1999, your Honor, Madeleine Albright, the secretary  
5 of state of the United States, announced her intentions to  
6 bring the matter up yet again with Prince Sultan when he  
7 visited the United States. In 1999, your Honor, the United  
8 Nations International Convention for the Suppression and  
9 Financing of Terrorism pointed out the important problem of the  
10 financing of terrorism and how charities were being used in  
11 such a fashion as to support, to support the efforts of Al  
12 Qaeda, Hamas, and others.

13 Your Honor, the bottom line here is we believe we've  
14 pled and placed in this record sufficient and ample evidence in  
15 a general fashion, in a general fashion, of the targeting of  
16 the United States by Al Qaeda. We believe that we have  
17 established, your Honor, a record that it was well known in  
18 Saudi Arabia and other Arabian Peninsula countries that Al  
19 Qaeda was using charities to funnel money to their operations.

20 We believe that through the fatwas, the convictions  
21 and other information that we placed in the record, that there  
22 was an abundance of evidence that the United States was  
23 concerned about Al Qaeda targeting the United States. This was  
24 highly publicized in the United States and in the Arab world.

25 I'd like now, your Honor, to turn to some specific --  
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1 first of all, I want to point out Judge Robertson's holding in  
2 the first Burnett decision at headnote 5 says, "If a party  
3 demonstrates that it can support its jurisdictional allegations  
4 through discovery, then jurisdictional discovery is justified."

5 Your Honor, I believe that the record here cries out  
6 for amplification and that the plaintiffs deserve an  
7 opportunity to place before your Honor additional information  
8 so that these important questions of jurisdiction and  
9 substantive liability can be addressed.

10 Your Honor, we have placed in the record evidence  
11 before you of various of the charities who are defendants in  
12 this case, of being recognized both in Saudi Arabia and in  
13 other foreign countries as harboring and funding Al Qaeda.  
14 1996, 1998, 1995, all of those examples we have placed before  
15 your Honor in the record. We have placed before your Honor a  
16 large number of media reports in the Arab media discussing the  
17 funding of Al Qaeda through donations to charities. There are  
18 articles that we pointed out in our submissions to your Honor  
19 of interviews that Mr. Bin Laden himself gave to television, to  
20 television reporters and to United States reporters, including  
21 The New York Times.

22 Now, your Honor, if I -- I think the Bin Laden  
23 indictment and the fact that he was placed on the FBI's most  
24 wanted list in the late 1990s certainly gives an amplitude of  
25 notice to the world that that gentleman was targeting the

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1 United States, that these various charities were being used in  
2 the indictment. It specifically refers -- Mr. Bin Laden's  
3 indictment here in New York specifically refers to the use of  
4 these NGOs.

5 Now, your Honor, if you would like, I would like to  
6 spend a few minutes responding to some of the factual  
7 assertions that the defendants made not with respect to whether  
8 they're doing business, because we were under the impression  
9 that we were addressing conspiracy jurisdiction and directed  
10 activity at the United States jurisdiction, the law about which  
11 Mr. Carter will discuss with you in a moment. But if I might  
12 defend the complaint itself, and I'm going to refer here simply  
13 to Burnett's third amended complaint.

14 Your Honor, there are 139 paragraphs within the third  
15 amended complaint that refer to how Al Qaeda purposefully  
16 availed itself of and targeted the United States. Your Honor,  
17 Mr., one of the defendants whose case is before you today is  
18 Mr. Adel Batterjee. Mr. Batterjee filed a pleading in this  
19 case, a sworn affidavit, which I think we have addressed, but  
20 it bears repeating. For example, he denied ever having  
21 participated in the writing of a book by Osama Bin Laden. We  
22 filed an affidavit of one of our investigators and the  
23 correspondent for Mr. Batterjee about his participation in that  
24 book. That book was distributed in the United States, and  
25 indeed, a copy of it was gotten by our investigator at the

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1 request from Mr. Batterjee.

2 Your Honor, with respect to Mohamad Al-Faisal,  
3 Mr. Kreindler had requested, and of course, I have to ask your  
4 Honor's permission, to address Prince Mohamad Al Faisal when  
5 I'm done, if your Honor would permit him to do that for a few  
6 minutes.

7 THE COURT: We're going to stick to the game plan.

8 MR. MOTLEY: I notice he's chomping at the bit, your  
9 Honor.

10 MR. KREINDLER: Your Honor, if I could have three  
11 minutes, that's all it will take.

12 THE COURT: There will be no stage setting.

13 MR. KREINDLER: Not stage setting, three minutes on  
14 very specific points, your Honor.

15 THE COURT: Fine. As it is, we're going to break for  
16 lunch at 12:30, and, at the rate we're going now, Mr. Motley is  
17 going to use that up. But I am going to hold you to a half  
18 hour. Keep going.

19 MR. MOTLEY: Yes, sir. And I certainly am going to  
20 leave ample time for Mr. Carter to discuss the law.

21 Your Honor, with respect to some of the matters that  
22 were suggested by counsel, counsel cited some British court  
23 decisions. Those are libel cases, your Honor, where the best I  
24 can tell, there's no defense, if you, if the person proves that  
25 something was published in the U.K., the truth is not

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1 necessarily a defense.

2 Your Honor, with respect to the National Commercial  
3 Bank, we think that the National Commercial Bank is in the same  
4 position that Al Rajhi was in Burnett I. We were permitted  
5 limited jurisdictional discovery against Al Rajhi, and we  
6 think, with great respect, your Honor, we should be entitled to  
7 take discovery with respect to National Commercial Bank.

8 We, I think, have addressed the other defendants in  
9 our papers, your Honor, with sufficient specificity, and I  
10 would just like to say generally, your Honor, that the  
11 defendants like to fasten on what we've only said three or four  
12 things about this particular defendant. Your Honor, this  
13 ignores the general allegations that we've made, which we pled  
14 pursuant to the procedures that were worked out by Judge  
15 Robertson when he was still officiating over the case, and  
16 these are general allegations that are applicable to all of the  
17 defendants, and they conveniently want to ignore those.

18 With that, your Honor, I will be glad to answer any  
19 other questions and express my gratitude for your Honor's  
20 patience in allowing us to make this lengthy presentation  
21 today. And if Mr. Carter is ready, I can turn it over to him.

22 THE COURT: Very well. Go ahead, Mr. Carter. The  
23 floor is yours.

24 MR. CARTER: Thank you.

25 THE COURT: For your purposes, sir, we'll break at  
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1 12:30. Whatever you'd like to address between now and then.  
2 MR. CARTER: Thank you, your Honor.

3 As Mr. Motley mentioned, I'm going to be discussing  
4 the legal standards and principles which should guide the  
5 Court's analysis of the plaintiffs' claims against these  
6 defendants for jurisdictional purposes.

7 To begin with, your Honor, I think it's important to  
8 note that the touchstone of due process is fair warning and  
9 that no analysis of due process should lose sight of that  
10 fundamental objective. The Fifth and Fourteenth Amendments of  
11 the Constitution serve to protect an individual's liberty  
12 interest by requiring that individuals have fair warning that  
13 an activity they engage in may subject them to the jurisdiction  
14 of a foreign sovereign. And as a corollary to this fair  
15 warning principle, the Supreme Court has specifically noted  
16 that the analysis of minimum contacts should be informed by  
17 relevant policy considerations, which includes the forum's  
18 interest in adjudicating the dispute and the plaintiffs'  
19 interest in having an efficient and convenient forum for  
20 obtaining redress for their injuries.

21 In fact, the Supreme Court has held that such policy  
22 considerations may serve to establish the reasonableness of  
23 jurisdiction upon a lesser showing of minimum contacts than  
24 otherwise would be required. And in keeping with that  
25 principle, your Honor, the Supreme Court has explained that

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1 there is no mechanical formula for evaluating minimum contacts  
2 or analyzing due process and has instead emphasized the need  
3 for the courts to employ a highly realistic approach.

4 In employing that highly realistic approach, the  
5 courts have consistently held that the most important  
6 consideration is whether the defendants' conduct is such that  
7 he should reasonably anticipate being held in the court in the  
8 forum. And under these standards, your Honor, the exercise of  
9 jurisdiction over these defendants is entirely reasonable and  
10 consistent with due process considerations.

11 First and foremost, your Honor, this is a case about  
12 the sponsorship of terrorism. It is not a case involving a  
13 commercial dispute over debts owed under a franchise agreement,  
14 as was before the Supreme Court in Burger King. And because  
15 this is a terrorism case, there are unique policy  
16 considerations implicated. And as a result, the plaintiffs  
17 would submit that the decisions which are most critical and  
18 most instructive in evaluating the minimum contacts and  
19 personal jurisdiction in this case are Pugh v. Libya, which  
20 Mr. Motley mentioned and Rein v. Libya, a decision of the  
21 Southern District of New York.

22 Now, during his presentation, your Honor, Mr. Cooper  
23 suggested that those cases were inapposite because they dealt  
24 with claims against foreign sovereigns; therefore, it didn't  
25 speak to the issues presented to the Court today, and that's

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1 fundamentally inaccurate.  
2 First of all, Pugh involved, among other things,  
3 claims against individuals who were sued in their personal  
4 capacity, and the court engaged in an extensive and thorough  
5 analysis of due process question in relation to those specific  
6 claims. And likewise, although the claims in Rein were against  
7 a foreign state, that did not alleviate the need for the court  
8 to go through a thorough and complete analysis of due process  
9 considerations because, as the Court is aware, in the Second  
10 Circuit, foreign states are entitled to due process as persons  
11 within the meaning of the Constitution.

12 So I think to begin with, Pugh and Rein do speak  
13 directly to the issues before the Court today. And in Pugh,  
14 the court began its analysis by recognizing that the United  
15 States has a compelling interest in sanctioning those who  
16 commit terrorist acts and protecting the citizens of the United  
17 States from terrorist attacks. That interest has been  
18 consistently and repeatedly announced to the world through acts  
19 of Congress, the decisions of these courts and the executive  
20 branch for nearly 20 years.

21 The Antiterrorism Act, which, as Mr. Motley explained,  
22 forms the predicate for many of the claims in this case, is  
23 itself an expression of that paramount interest in the United  
24 States of providing redress against terrorists. And not  
25 insignificantly, your Honor, it provides a private cause of

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1 action, a civil cause of action against individuals who provide  
2 material support and sponsorship to a terrorist organization,  
3 which is precisely the predicate for the claims against the  
4 defendants here today.

5 In view of the United States' compelling interest in  
6 sanctioning terrorists and protecting U.S. citizens from  
7 terrorism, the court in Pugh held that individuals who sponsor  
8 terrorists should reasonably expect to be haled into court in  
9 the U.S. where it was altogether foreseeable that some  
10 Americans would be among the foreign nationals targeted by  
11 their actions and, consequently, that the exercise of  
12 jurisdiction comported with fair play and substantial justice.

13 The Southern District of New York employed similar  
14 reasoning in Rein, holding that any foreign state would know  
15 that the United States has a substantial interest in protecting  
16 its flag carriers and nationals from terrorist activities and  
17 should reasonably expect that if those interests were harmed,  
18 they would be subject to a variety of potential responses  
19 including civil actions in U.S. courts.

20 And in keeping with the reasoned decisions of Pugh and  
21 Rein, the defendants in this case are properly viewed to have  
22 established minimum contacts with this forum sufficient to  
23 satisfy due process, both because their conduct was directed at  
24 the United States within the meaning of *Calder v. Jones*, and  
25 because the actions of their coconspirators in the United

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1 States are attributable to them for purposes of evaluating  
2 jurisdiction under the conspiracy theory.

3 As Mr. Motley explained in some detail, Al Qaeda had  
4 consistently and repeatedly declared its intention to attack  
5 U.S. citizens wherever they may be found in the world. And in  
6 sponsoring a terrorist organization that was and remains so  
7 singularly devoted to attacking the innocent citizens of the  
8 United States, the defendants necessarily directed their  
9 conduct at the U.S.

10 Now, Mr. Cooper raised some arguments based on a  
11 statement in Calder v. Jones that the defendants in that case  
12 were principal participants in the intentional wrong. And I  
13 would respectfully suggest that that statement within Calder v.  
14 Jones doesn't support the proposition for which the defendants  
15 proffer it to this Court here. It merely indicated that the  
16 defendants in that case actively participated in the  
17 intentional tort which is the subject of that claim. The  
18 defendants here would suggest to the Court that it essentially  
19 imports into the due process analysis a but for standard of  
20 causation. And that's not what it does.

21 As Mr. Motley explained, the but for standard of  
22 causation has been explicitly rejected in terrorism cases in  
23 recognition of the fact that terrorist acts are only made  
24 possible by the contributions of many individuals to the  
25 terrorist organizations. And so I don't think that the comment

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1 that the defendants in Calder were principal participants  
2 supports the proposition for which it's been cited.

3        Regardless, your Honor, these defendants are principal  
4 participants in the wrong which is the basis of plaintiffs'  
5 claims here. Individuals who provide material support and  
6 sponsorship to a terrorist organization are primary and  
7 integral participants in the conduct of terrorist attacks.  
8 Congress has recognized this fact within the Antiterrorism Act  
9 by criminalizing the act of providing material support and  
10 resources to a terrorist organization and by providing a civil  
11 cause of action against those who do so.

12       The courts have endorsed this view as well and again,  
13 both William and Kilburn, to which Mr. Motley made reference,  
14 are instructive on this point. In both of those cases, the  
15 courts properly held that there's no reasoned basis for  
16 distinguishing between individuals who provide general support  
17 for the terrorist organization and individuals who provide  
18 specific support for an attack which causes the plaintiffs'  
19 injuries. The reality is that money donated to a terrorist  
20 organization is fungible and can be used for any purposes.

21       Terrorism officials have similarly testified that  
22 money is the lifeblood of terrorism, and, most recently, the  
23 9/11 Commission concluded that Al Qaeda needed \$30 million on  
24 an annual basis before 9/11 to sustain its global organization  
25 and that the planning, coordination and conduct of the

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1 September 11 attack would not have been possible absent the  
2 infrastructure sustained by those funds.

3 There's another important point, I think, your Honor,  
4 that defendants lose sight of. Al Qaeda is a very  
5 sophisticated organization. It recognizes that when it carries  
6 out an attack, there will be an investigation and that that  
7 investigation will invariably lead to the source of funding  
8 which was used to carry out the attack. And being a smart  
9 organization, it consequently avoids using its principal  
10 sources of funding to carry out attacks. It instead uses funds  
11 from its principal sources to sustain its organization and uses  
12 less important sources of funding to actually fund the  
13 operations.

14 The bombing attack in Spain is an example of that  
15 where simple criminal enterprises were used to fund an attack  
16 rather than the charity system or contributions from  
17 significant donors.

18 Another point in regards to the defendants' reliance  
19 on the primary participant comment in Calder, your Honor, which  
20 bears mention is that Calder, while involving an intentional  
21 tort, didn't involve claims based on the sponsorship of  
22 terrorism. And while defamation is a significant wrong, it's  
23 nothing close to the sponsorship of a terrorist act. And so  
24 there were fundamentally different considerations and policy  
25 considerations at issue in that case.

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1 I'd like to move on briefly, your Honor, to the  
2 conspiracy theory of jurisdiction

3 THE COURT: Is this a convenient time? How long is it  
4 going to take?

5 MR. CARTER: I think it is a convenient time.

6 THE COURT: Go ahead, if you have five minutes.

7 MR. CARTER: I meant it was a convenient time for a  
8 break because it's probably not five minutes.

9 THE COURT: All right. We'll take our luncheon recess  
10 until 2:00, and we will have, save you three minutes,  
11 Mr. Kreindler, and then we'll finish up plaintiffs' argument  
12 and 30-minute rebuttal after that.

13 The Court will stand in recess.

14 (Luncheon recess)

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AFTERNOON SESSION  
2:00 p.m.

(In open court)

THE COURT: Good afternoon. Please be seated.

Mr. Carter, you may continue.

6 MR. CARTER: Thank you, your Honor. When we broke for  
7 lunch, I was about to begin speaking about the conspiracy  
8 theory of personal jurisdiction.

9 As your Honor is aware from the briefs, the conspiracy  
10 theory of jurisdiction is based on the premise that the acts of  
11 coconspirators within the forum state are like those of an  
12 agent attributable to an out-of-state defendant for  
13 jurisdictional purposes. In this case, the defendants  
14 themselves acknowledge the existence of the conspiracy which  
15 led to the September 11 attack. However, they failed to  
16 understand and appreciate the significance of that fact in  
17 regards to the claims asserted against it.

18 The Second Circuit has, in fact, held that where the  
19 existence of a conspiracy has been proven to exist, the quantum  
20 of evidence required to link a defendant to it need not be  
21 overwhelming and may be established purely through  
22 circumstantial evidence. And, your Honor, those are cases in  
23 which the Second Circuit was upholding criminal conspiracy  
24 convictions based purely on circumstantial evidence.

25 In addition, the Second Circuit has expressly

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1 recognized that conspiracies are rarely proved through direct  
2 evidence, and an individual defendant's participation is rarely  
3 proved through direct evidence. And as a result, plaintiffs  
4 may rely on circumstantial evidence based on or viewed in the  
5 totality of the circumstances.

6 Contrary to the defendant's assertion, the various  
7 complaints do, your Honor, contain very specific allegations as  
8 to how these particular defendants directed their conduct at  
9 the United States and conspired with and aided and abetted Al  
10 Qaeda. And in this circuit, before discovery, a plaintiff may  
11 defeat a jurisdictional testing motion based purely on the  
12 allegations of the complaint, well pled allegations of the  
13 complaint.

14 And in view of that fact, your Honor, I'd like to turn  
15 briefly to the allegations of the complaint vis-a-vis these  
16 particular defendants because they present a far different  
17 picture from that that was suggested by the defendants during  
18 their presentation. I take for an example, your Honor,  
19 Abdulrahman Bin Mahfouz. As his counsel acknowledged and as  
20 alleged in the complaints, Mr. Bin Mahfouz served as cofounder  
21 of the Muwafaq Foundation, with Yassin Al Kadi, and Mr. Bin  
22 Mahfouz's father, Kahlid Mahfouz.

23 Now, during his presentation, counsel for Mr. Bin  
24 Mahfouz, suggested essentially that the Muwafaq was an innocent  
25 organization that had not been designated, and this was a

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1 fundamentally misleading statement, your Honor. Mr. Al Kadi,  
2 the founder of Muwafaq, was himself designated on October 12,  
3 2002, and the press statement issued by the treasury department  
4 stated that Al Kadi founded Muwafaq. And then it went on to  
5 explain that Muwafaq is an Al Qaeda front that receives funding  
6 from wealthy Saudi businessmen. Saudi businessmen have been  
7 transferring millions of dollars to Bin Laden through Muwafaq.

8 Now, there is an entire section of the Federal,  
9 Ashton, and Burnett complaints dedicated to setting forth  
10 allegations regarding the conduct of the Muwafaq Foundation,  
11 and as much as counsel for Mr. Bin Mahfouz would like to  
12 divorce those allegations from those specific allegations  
13 against his client, they can't be. All of that must be read as  
14 a whole, and that's a point that's true as to all of these  
15 defendants.

16 One of the things that they all seek to do is to  
17 isolate from the remainder of the complaint the sections of the  
18 complaint in which they're referenced. But they have to be  
19 tied back to the other allegations of the complaint. And when  
20 read collectively as to Mr. Bin Mahfouz, these allegations  
21 clearly describe his intentional targeting of the United States  
22 and aiding and abetting and participation in Al Qaeda's  
23 conspiracy.

24 Now I mentioned a minute ago, your Honor, that Muwafaq  
25 was cofounded by Kahlid Bin Mahfouz. Kahlid was, not

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1 coincidentally, also the president and CEO of National  
2 Commercial Bank, also a defendant challenging jurisdiction here  
3 today. I say "not coincidentally" because National Commercial  
4 Bank, channelled \$3 million to Muwafaq.

5 THE COURT: When was he chairman?

6 MR. CARTER: He was chairman of the bank between 1996  
7 and 1999, your Honor, and he served as an officer of the bank  
8 prior to that point, and those are facts set forth in the  
9 various complaints as well.

10 National Commercial Bank also contributed \$74 million  
11 to IIRO, a point which is also set forth in the various  
12 complaints. And a former CIA counterterrorism expert has  
13 described NCB as a channel to Bin Laden. Those are all  
14 allegations set forth in the complaint which from the basis of  
15 the plaintiffs' claims against NCB.

16 In his presentation to the Court, Mr. Liebman avoided  
17 any reference to those allegations, instead adopting the  
18 arguments presented by other counsel, as to the purposeful  
19 direction and conspiracy aspects of plaintiffs' jurisdictional  
20 theory, but those allegations --

21 THE COURT: Where did this CIA agent make this claim?

22 MR. CARTER: Your Honor, I believe it was in an  
23 interview. It's not in court testimony.

24 THE COURT: Do you have any facts to back it up?

25 MR. CARTER: Your Honor, we do not have evidence which  
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2 would necessarily be admissible of record in a trial at this  
3 point.

4 What I think, though, is that there are facts which  
5 are sufficient to sustain the allegations. There is, according  
6 to various reports, an extensive investigation that led to a  
7 disclosure that NCB was funneling money to terrorists which  
8 prompted the Saudi government to take control of the bank in  
9 1999. And so what we would suggest is that based on the very  
10 specific allegations --

11 THE COURT: Did the Saudi government state that's why  
12 they were doing it?

13 MR. CARTER: No, they didn't say that's why they were  
14 doing it, your Honor.

15 THE COURT: You're saying it.

16 MR. CARTER: It is the allegation which is part of the  
17 basis of our complaint and relative to which we would seek an  
18 opportunity to conduct discovery, your Honor.

19 Prince Sultan also avoids --

20 THE COURT: Do you maintain that anybody can just make  
21 up any sort of claims and conclusions and, therefore, you're  
22 entitled to discovery? That isn't quite what the law is, is  
23 it?

24 MR. CARTER: No, your Honor. I think what the law is  
25 is that the allegations of conspiracy have to be viewed in  
light of the totality of the circumstances.

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1                   THE COURT: I know. You're giving me all this smoke  
2 in broad strokes, in the totality and all that. Do you have  
3 any facts?

4                   MR. CARTER: We do have the fact, your Honor, that  
5 Mr. Bin Mahfouz was the founder of the Muwafaq Foundation which  
6 has been described by the treasury department --

7                   THE COURT: When?

8                   MR. CARTER: He founded the Muwafaq Foundation -- I  
9 don't know the specific year, your Honor, that it was founded.  
10 It was in existence until relatively recently.

11                  THE COURT: I didn't ask you that. When did he found  
12 it? You're saying that's the big deal. He founded it when?

13                  MR. CARTER: 1992, your Honor.

14                  THE COURT: A long time ago.

15                  MR. CARTER: Your Honor, it's a long time ago, but  
16 it's also the period during which Al Qaeda was building its  
17 financial infrastructure so that it could support its capacity  
18 to conduct global terrorism attacks. So I don't think what  
19 happened in that time frame is necessarily irrelevant here.

20                  Mr. Bin Mahfouz is then also chairman of the National  
21 Commercial Bank. There is a relationship among all of these  
22 parties which is relatively significant. He's founding Muwafaq  
23 with Yassin Abdullah Al Kadi who is an official designated by  
24 the U.S. Government as an Al Qaeda sponsor.

25                  THE COURT: When did they designate him?

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1                   MR. CARTER: They designated him in October of 2002,  
2 your Honor.

3                   Prince Sultan, during his discussion, also avoided,  
4 your Honor, any real discussion of the allegations that were  
5 made against him, but I think it's important to look at those  
6 as well. Prince Sultan, as has been described in some detail,  
7 received specific notification in 1994 from Mr. Pasqua of the  
8 French government and again in 1999 and 2000 from officials of  
9 the U.S. Government, and all of that has been substantiated  
10 through affidavits submitted by the plaintiffs. And he was  
11 notified specifically that Saudi-based charities were involved  
12 in funneling money to terrorist organizations. And Mr. Pasqua  
13 singled out the Muslim World League. At the same time, Prince  
14 Sultan was serving as the head of the Supreme Council for  
15 Islamic Affairs, an organization which had the responsibility  
16 for reviewing funding requests of the charities and making  
17 disbursements to the charities.

18                   On that same board was, since 1995, a member of the  
19 Saudi intelligence service, your Honor. Prince Turki served in  
20 that capacity until he moved away from the intelligence  
21 service. So I think that it's fair to say that Prince Sultan,  
22 in his capacity as a government official, having received  
23 notification from foreign officials and serving on a board with  
24 oversight responsibility of the charities along with Saudi  
25 intelligence officials, had fair notice of what was going on

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1 with regard to the charities and their involvement in passing  
2 money on to terrorists. And subsequent developments have only  
3 affirmed this, your Honor, that the Saudi government itself in  
4 June of this year announced that it was shutting down many of  
5 its international charities because they were involved in  
6 sponsoring terrorism. They described it themselves as a  
7 counterterrorism measure.

8 Now, despite all of these vehicles through which he  
9 would have received notice of the problem, Prince Sultan  
10 continued to give funding both in his official and personal  
11 capacity to the very organizations which had been identified to  
12 him as being problematic. And when viewed in the totality of  
13 the circumstances, that is, I would submit, your Honor --

14 THE COURT: What proof do you have of his giving  
15 money?

16 MR. CARTER: Your Honor, there were submitted in the  
17 proceedings before Judge Robertson an actual videotape from a  
18 member of the Saudi government acknowledging that Prince Sultan  
19 had made contributions in his personal capacity. There are  
20 publications to this effect on Saudi information guide, in  
21 which it describes Prince Sultan's annual contributions to, for  
22 instance, the IIRO, in the amount of 1 million Saudi rials,  
23 annually, which is approximately \$300,000.

24 So we do have specific evidence that he made these  
25 contributions. We don't have, your Honor, the plaintiffs will

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1 admit, an admission from Prince Sultan that he intended those  
2 contributions to be channelled to Al Qaeda, but viewed in the  
3 totality of the circumstances, the allegations and evidence are  
4 sufficient to state a *prima facie* case of conspiracy at this  
5 stage of the proceeding.

6 Another of the defendants up today is Adel Batterjee,  
7 your Honor. I would say about Mr. Batterjee that he opened  
8 offices for Benevolent International Organization, another  
9 charity, in Bosnia and Chicago. Benevolent International  
10 Organization was designated by the U.S. Government as an Al  
11 Qaeda sponsor. There are additional --

12 THE COURT: When?

13 MR. CARTER: Within the last two years, your Honor.  
14 2002, I believe, would be the date.

15 He is also alleged to have either wrote or  
16 commissioned a biography on Osama Bin Laden and the jihad  
17 struggle.

18 So there are, your Honor, specific allegations as to  
19 all of these defendants, regarding the nature of the conduct  
20 through which they are alleged to have sponsored this terrorist  
21 organization, and those specific allegations are sufficient to  
22 sustain the jurisdiction testing motion at this stage of the  
23 proceedings.

24 I'd like to briefly, your Honor, address a couple  
25 other points, the first of which is the argument that the

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1 defendants can't be haled into court based on the activities of  
2 the corporations of which they're officers or directors. And,  
3 your Honor, that misses the point fundamentally of the nature  
4 of the allegations made against the defendants. We're not  
5 attempting to bring them into court based on the actions of the  
6 corporations. We're seeking to assert claims against them  
7 based on their own actions, which, in some cases, were carried  
8 out through the corporation as an agent. And the Second  
9 Circuit has been clear that the so-called fiduciary shield  
10 doctrine doesn't insulate a corporate officer from liability or  
11 the jurisdiction of the courts where he exercises a degree of  
12 control and effectively uses the corporation as an agent to  
13 carry out those actions. And a fair reading of the complaints  
14 is not that these people happen to be corporate officers, but  
15 rather that they used their positions and authority within  
16 these corporations to channel funding and sponsorship to Al  
17 Qaeda.

18 Mr. Cohen, during his presentation, also made an  
19 argument, your Honor, that the actions of the coconspirators  
20 would only be attributable to the individual defendants in the  
21 event that we could demonstrate that they acted for effectively  
22 the benefit of those defendants. And what I would say is that  
23 individuals who sponsor terrorism necessarily seek to see the  
24 terrorist organization succeed in its illicit plan to carry out  
25 terrorist attacks. So successful terrorist attacks are

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2 essentially the profit that sponsors of terrorism derive from  
3 their sponsorship of the organization.

4 So I think that that requirement is satisfied here,  
5 based on the knowing and intentional sponsorship of the  
6 organization itself. It's not a financial profit as would be  
7 typical in many cases, but it is certainly something that the  
8 defendants who sponsor a terrorist organization derive benefit  
9 and, as tragic as it is, pleasure from.

10 I think lastly, your Honor, I would just like to speak  
11 briefly about Judge Robertson's decision in Burnett below as to  
12 the issue of personal jurisdiction because it was raised by a  
13 few of the defendants. There are several concerns and problems  
14 with the defendants' reliance on the decision here. First of  
15 all, I would submit that Judge Robertson's decision is  
16 inconsistent with Pugh and Rein and that those are the more  
17 well reasoned decisions.

18 I would also say that Judge Robertson's decision was  
19 clearly predicated on his reading and interpretations of the  
20 allegations of the complaint and the record before him at that  
21 time. And the record --

22 THE COURT: Doesn't every judge do that?

23 MR. CARTER: Every judge does do that, your Honor,  
24 you're correct.

25 THE COURT: I hope he would do those things. Without  
reading --

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1                   MR. CARTER: No. I would just say a lot of defendants  
2 here would like to extrapolate it to them, and it doesn't  
3 really work to extrapolate it to them since it's based on the  
4 allegations against him. And even as to Prince Sultan, the  
5 allegations before this Court and the record before this Court  
6 at this time are considerably different. So I think that all  
7 of those factors weigh against applying Judge Robertson's logic  
8 to these defendants in the present context.

9                   I'd like to cede the last few minutes, your Honor, to  
10 Mr. Kreindler so that he can speak briefly about Prince  
11 Mohamad.

12                  MR. KREINDLER: Judge, I have four things to say about  
13 Prince Mohamad, and listening to your questions to counsel this  
14 morning and this afternoon, I think it goes to your inquiry.  
15 And your inquiry is: Why did we sue these defendants among the  
16 full panoply of contenders?

17                  No. 1, your Honor, we sued Prince Mohamad because he  
18 intentionally helped Osama Bin Laden by providing banks,  
19 accounts, and financial services. When Osama Bin Laden moved  
20 his organization to the Sudan, he needed banks' financial  
21 services. Prince Mohamad owned and controlled three banks in  
22 the Sudan, Faisal Islamic Bank, Al-Shamal Bank and Tadamon  
23 Bank.

24                  One of those banks, in 1991, Osama Bin Laden deposited  
25 or invested \$50 million. That's according to the 1996 State

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1 Department fact sheet. That bank was used to move money to  
2 banks all around the world, including a bank in Texas that was  
3 used for Osama Bin Laden to purchase an airplane for \$250,000.  
4 Osama Bin Laden needed international banking, and Prince  
5 Mohamad provided it to him.

6 No. 2, Mr. Cohen referred to the president, CEO of  
7 Suntrust and said, you know, by this reasoning he could be sued  
8 anywhere around the world. What makes that analogy false is  
9 the element of intent. We have alleged that Prince Mohamad  
10 provided banking services intentionally to help Osama Bin  
11 Laden, not that his bank was used willy-nilly.

12 Point No. 3, Mr. Cohen makes the point that we never  
13 allege that Prince Mohamad made money or intended to make money  
14 by providing his banks to Osama Bin Laden for Osama Bin Laden's  
15 use, and, your Honor, that is exactly our point. He didn't do  
16 it as a banker to make money. He did it because he wanted to  
17 help Osama Bin Laden, out of sympathy with Osama Bin Laden's  
18 goals.

19 Point 4, your Honor, Mr. --

20 THE COURT: What do you base that on?

21 MR. KREINDLER: What I base that on --

22 THE COURT: It's out of whole cloth. He wanted to  
23 help him. What do you base that on?

24 MR. KREINDLER: One of the things that's seen in  
25 Prince Mohamad's papers and other papers is a lot of

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1 information on Islamic banking. They can't charge interest,  
2 you're a joint partner. From the information we have, we do  
3 not see a profit to Prince Mohamad.

4 THE COURT: You're making a conclusion, he wanted to  
5 do something. You just reach out and make these claims with no  
6 basis whatsoever, as far as I can see in your papers.

7 MR. KREINDLER: Your Honor, that is the inference we  
8 think it is proper to draw at this stage.

9 THE COURT: You don't argue it that way, do you?

10 MR. KREINDLER: Your Honor, I'm not arguing with you  
11 at all. We cannot --

12 THE COURT: Go right ahead. It's okay. You're  
13 permitted, you know.

14 MR. KREINDLER: Well, I'll try and only do it when it  
15 may do us some good.

16 THE COURT: You get a point for candor.

17 MR. KREINDLER: Let me make one more point.

18 In his testimony from the embassy bombing case, I  
19 don't know I don't think Mr. Cohen's characterization is fair.  
20 Day 2 of the embassy bombing trials here, Assistant U.S.  
21 Attorney Fitzgerald asks the question to Al Qaeda's money man,  
22 whose name is Al Fadl:

23 "Q. While you were in the Sudan, did you handle money for  
24 Osama Bin Laden? Did you work on the finances for Al Qaeda  
25 while you were in the Sudan?

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1 "A. Through the interpreter, "Yes.

2 "Q. Did you know where the bank accounts," that's accounts

3 plural, not singular, "of Osama Bin Laden and Al Qaeda were?

4 "A. Yes.

5 "Q. Do you know whose name they," not it, were in?

6 "A. Through the interpreter, "The bank account under Osama Bin

7 Laden in Bank Shamal Khartoum," the capital of the Sudan."

8 And then a page later:

9 "Q. Where were accounts held?

10 "A. In Sudan and is in Bank Tadamon Islami.

11 "Q. Where else?

12 "A. Also we got account in Bank Faisal Islami."

13 Your Honor, what we know at this point is by owning and

14 controlling these banks in the Sudan, at the time that Osama

15 Bin Laden moved there and needed banking services, Prince

16 Mohamad --

17 THE COURT: Are you suggesting having a bank account

18 with your bank makes you responsible?

19 MR. KREINDLER: No. No, your Honor. I am suggesting

20 that in a banking world and a world very different than ours

21 with an obligation to know your customers well, as existed

22 there, that we believe, based upon using his company to --

23 THE COURT: Is there a Saudi Arabian regulation that

24 creates a cause of action to the banker to know your customer?

25 Reading the regulations, it doesn't seem to say that.

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1                   MR. KREINDLER: I'm going back to something that I  
2 don't think is in dispute, your Honor, and if it is in dispute,  
3 I'm sure one of the many defense lawyers here will correct me,  
4 or try to correct me. But it is my understanding, and again, I  
5 do not think it's in dispute, that one of the tenets of Islamic  
6 banking, since the banks are not permitted to charge interest,  
7 is to form a working relationship with its big customers.

8                   And \$50 million in the Sudan in 1991, I mean, we're  
9 looking at the context, \$50 million in the Sudan in 1991 is  
10 probably about half the money that's in the whole country.  
11 It's a terribly significant event in a small world where a  
12 relatively few number of people wield enormous political and  
13 economical control.

14                  And what we're saying, your Honor, here in this  
15 context and in others is doing the best job we could, before  
16 any discovery, before any of the criminal trials arising from  
17 9/11, we've uncovered information that we believe is  
18 significant. And when this information is considered,  
19 particularly when you start connecting the dots, we think that  
20 given the chance to prove to your Honor's satisfaction, we will  
21 prove to your Honor a clear picture of complicity and  
22 culpability on the part of the defendants we've sued.

23                  At this point, your Honor is right. We have just  
24 begun. We have done the best we could to uncover  
25 information --

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1                   THE COURT: Don't say I'm right. I didn't say any of  
2 the things you're now saying.

3                   MR. KREINDLER: No. I'm saying you're right, we're at  
4 the early stage. We have not proven our case. We all agree  
5 that we -- this case is not ready for a jury yet. But we have  
6 what we think is significant information, and we're entitled on  
7 a motion to dismiss on the pleadings to have the facts accepted  
8 as true and inferences drawn in our favor. That's what we're  
9 saying, your Honor.

10                  Was that three minutes?

11                  THE COURT: A lot more than I gave you for the  
12 questions. You're lucky you have a blind man watching the  
13 clock.

14                  All right. Who is going to do rebuttal?

15                  MR. COHEN: Your Honor, this is Louis Cohen for Prince  
16 Mohamad.

17                  Let me begin by saying about him --

18                  THE COURT: Are you going to do the entire rebuttal?

19                  MR. COHEN: No, I'm not. I think others will have  
20 things to say about --

21                  THE COURT: All right. Do it within your time  
22 structure.

23                  MR. COHEN: By my count, we have about 25 minutes left  
24 from our original hour and a half.

25                  THE COURT: All right.

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1                   MR. COHEN: Let me start by saying that Prince Mohamad  
2 said, in February of 2002, long before this litigation began,  
3 that, in a public statement, in both English and Arabic, that  
4 he expressed his personal condolences to the victims of 9/11  
5 and joined with the rest of the world in utterly condemning  
6 such acts unreservedly. I know that is not evidence of  
7 anything, but I want on the record the position that Prince  
8 Mohamad took before this litigation even began.

9                   Mr. Kreindler has now done something that he also did  
10 in his brief, and we called him on it; namely, to misstate very  
11 substantially the allegations that he has made in his  
12 complaint. And I would ask that the Court carefully read our  
13 short reply brief in the Ashton case, particularly the first  
14 three pages, in which we respond to Mr. Kreindler's assertions  
15 in his brief as to what it is that he has said. We make a  
16 couple of points in particular.

17                  His brief asserts, as he just did, and I'm quoting  
18 from page 1 of his brief, that Prince Mohamad knowingly and  
19 intentionally provided currency and financial services needed  
20 by Al Qaeda. He cites, looks to me like about 22 paragraphs of  
21 the complaint. If the Court will review those paragraphs, you  
22 will see that not one of them supports that allegation at all  
23 and that nothing else helps.

24                  For example, a couple of the paragraphs are paragraphs  
25 where it just says all the defendants conspired with Al Qaeda.

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1 A couple of the paragraphs deal with Kahlid Sheik Mohammed, the  
2 deputy to Osama Bin Laden, the planner of the 9/11 attacks,  
3 who, needless to say, has no relation to Prince Mohamad Al  
4 Faisal. A couple of the paragraphs deal with a general history  
5 that Mr. Motley gave us this morning, the attack on the COLE,  
6 the attack on the World Trade Center. None of those paragraphs  
7 asserts that Prince Mohamad transferred any money or anything  
8 of value to Al Qaeda.

9 Now, with respect to banks, first of all,  
10 Mr. Kreindler talks about three banks, Faisal Islamic Bank that  
11 I mentioned this morning, Al Shamal, and Tadamon Bank. The  
12 facts with respect to their own complaint are that there is  
13 nothing in their complaint that alleges that Prince Mohamad was  
14 ever a director, an officer, an employee, or a stockholder of  
15 Al-Shamal Bank, and he wasn't. There is nothing in their  
16 complaint that says he ever engaged in any transaction of any  
17 kind with that bank, and he didn't. And there is nothing in  
18 the complaint that says he ever approved anything that that  
19 bank, and that's the bank in which they've alleged that Osama  
20 Bin Laden invested \$50 million, there is nothing in the  
21 complaint that says that he ever approved any transaction  
22 involving that bank.

23 And I recall Mr. Carter's assertion that we're looking  
24 to what the individual defendants here did, not to what their  
25 corporations did. There's nothing that ties Prince Mohamad to

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1 the banking activities of that bank. The only connection is  
2 that there is an allegation that in 1984, 17 years before the  
3 events at issue, Faisal Islamic Bank in Sudan acquired, along  
4 with several other organizations, unrelated organizations, the  
5 list is at least five, some shares in Shamal Bank, but no  
6 allegation that it ever controlled Shamal Bank, and as I say,  
7 no allegation that Prince Mohamad personally ever had anything  
8 to do with that bank.

9 I won't repeat the whole speech, but the same thing is  
10 true with respect to Tadamon Bank. There is no relationship  
11 there.

12 Coming back to Faisal Islamic Bank and the testimony  
13 of this man Al Fadl, if the Court will read the pages leading  
14 up to and including this testimony, it is true that Mr. Al  
15 Fadl, who, by the way, himself left Sudan and turned himself in  
16 to the United States in 1996, so everything we're talking --  
17 this is according to the 9/11 Commission report, so everything  
18 we're talking about is before 1996, which is also when Osama  
19 Bin Laden left Sudan without any money, that testimony does  
20 describe bank accounts that the, that Mr. Al Fadl said Al Qaeda  
21 had had in Sudanese banks. And the examiner leads himself  
22 through testimony about several banks that have nothing to do  
23 with Prince Mohamad at all, and then ultimately asks a  
24 question, "Anywhere else?" and it is that that produces the one  
25 line on which, that they have quoted, saying we got account in

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1 Faisal bank Islamic, account singular, as the transcriber, as  
2 the transcriber had it.

3       What I said this morning is right. The only thing  
4 that they allege in their complaint or have with respect to  
5 Prince Mohamad is that he is the chairman, the foreign-based  
6 chairman, in the sense that he's Saudi and it's in Sudan, of  
7 the board of directors of a bank that has this one line of  
8 testimony saying, mysteriously, "We got account." We don't  
9 know anything else about that account except the inference that  
10 it was an account before 1996.

11       Let me say just, finally, one more word about  
12 conspiracy as a basis for jurisdiction.

13       Conspiracy can be a basis for jurisdiction over a  
14 foreign defendant where the conspiracy carried out evil  
15 actions, terribly evil actions in this case, in the United  
16 States, if the plaintiff can establish that the defendant was a  
17 member of the conspiracy. It isn't enough to allege that there  
18 was a conspiracy. The defendant has to be tied to it. And the  
19 argument is that the allegations against Prince Mohamad and  
20 various other defendants don't make out a case, wouldn't make  
21 out a case, even if all the alleged facts were true, that they  
22 were members of a conspiracy. And without that, they are not  
23 entitled to discovery because, as the Second Circuit said in  
24 the Jazini case, you have to have a *prima facie* case first.

25       The Second Circuit was considering the question

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1 whether the Jazinis had asserted a basis for jurisdiction over  
2 a Japanese corporation, Nissan Japan, the maker of Nissan  
3 automobiles, and said, no, and said no, the plaintiffs aren't  
4 entitled to any further discovery because they're, and I'm now  
5 quoting from page 185 of the opinion in 148 F.3d, because the  
6 allegations lack the factual specificity necessary to confer  
7 jurisdiction, the conclusory statements without any supporting  
8 facts that Nissan USA is wholly controlled by Nissan Japan, and  
9 dependent on Nissan Japan for its business plan and financing  
10 are but a restatement of factors to be considered under the  
11 standards set forth in other cases for showing that a U.S.  
12 corporation is an agent of a foreign corporation.

13 Those statements of legal conclusions are not enough  
14 even to entitle the plaintiffs to discovery. The allegations  
15 that have been made against Prince Mohamad and other defendants  
16 in this case, I carefully reviewed the complaint and I agree  
17 that you should view the complaint as a whole, do not have the  
18 specificity necessary to confer jurisdiction or entitle the  
19 plaintiffs to discovery.

20 Thank you, your Honor.

21 THE COURT: Okay, Mr. Cohen. I think you reached into  
22 your teammates' time. I got your point.

23 MR. COHEN: Thank you.

24 THE COURT: Thank you.

25 MR. COOPER: Casey Cooper, your Honor, on behalf of  
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2 Prince Sultan.  
3 Mr. Motley did a masterful job this morning of  
4 establishing a *prima facie* case of jurisdiction against Al  
5 Qaeda. He's absolutely right, Al Qaeda did target the United  
6 States. The fact of the matter is that Al Qaeda targeted and  
7 continues to target to this day the Kingdom of Saudi Arabia and  
8 specifically my client. Osama Bin Laden named him in his 1996  
9 fatwa that Mr. Motley mentioned calling him a traitor to the  
nation.

10 In contrast, I heard nothing new today to establish  
11 personal jurisdiction over Prince Sultan. Two pieces of  
12 evidence were specifically mentioned. Mr. Motley claims that  
13 an affidavit by the former French minister of interior,  
14 Mr. Pasqua, describing a 1994 meeting with Prince Sultan, shows  
15 that Prince Sultan was on notice that certain charities were  
16 supporting Al Qaeda. Your Honor, I have read that affidavit  
17 now six or seven times. Nowhere does it mention Al Qaeda, and  
18 in fact the only charity that it mentions is the Muslim World  
19 League. The problem is the only charities that Prince Sultan  
20 is on the record as supporting or as authorizing government  
21 grants to on this record are the IIRO and the World Assembly of  
22 Muslim Youth, not the Muslim World League.

23 Second, Mr. Motley mentioned an affidavit by William  
24 Wechsler, regarding a 1999 meeting between U.S. officials and  
25 unnamed Saudi officials. Importantly, the affidavit never once

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1       mentions Prince Sultan. I would echo what Mr. Cohen said about  
2       really carefully parsing this evidence that the plaintiffs have  
3       put forth. It's been mischaracterized repeatedly, and it's  
4       really a trap.

5           Another allegation mentioned by Mr. Carter, he said  
6       that Prince Sultan heads an organization called Supreme Council  
7       of Islamic Affairs. That is correct. Mr. Carter says that  
8       that organization makes funding disbursements. That is simply  
9       not true. There's nothing in the record to support it. As a  
10      matter of fact, the only donations in the record having any  
11      connection with the Supreme Council of Islamic Affairs are to  
12      the World Muslim Youth. It's clear on the face of those, the  
13      checks that we submitted, they're government checks. It's  
14      official conduct.

15       But more fundamentally, your Honor, even if all of the  
16      plaintiffs' evidence says what Mr. Motley and Mr. Carter says  
17      that it says, it's not enough under Burger King and Calder to  
18      establish a *prima facie* case on jurisdiction. No primary  
19      participation. No personal involvement in the wrongdoing that  
20      gave rise to the plaintiffs' injuries. As a result, under  
21      Jazini, which the plaintiffs agree it appears applies because  
22      they've not made out a *prima facie* case, there is no  
23      entitlement to jurisdiction.

24       Mr. Carter seemed to assert that primary participation  
25      as used by the Supreme Court in Calder doesn't really mean what

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1 it says or applies only to certain classes of intentional torts  
2 like libel but not others like, you know, terrorism. The fact  
3 of the matter is there's no support for that position of the  
4 case law, and it's based fundamentally on this notion that  
5 policy considerations can be the basis for an assertion of  
6 personal jurisdiction on some lesser showing of minimum  
7 contacts in certain cases.

8 The Supreme Court in Burger King addressed that exact  
9 issue, quoting that while the courts properly may take into  
10 account policy considerations, it is no substitute for  
11 constitutionally required minimum contacts analysis. I quote  
12 471 U.S. 462 at 476. Once it has been decided that a defendant  
13 purposefully established minimum contacts within the forum,  
14 these contacts may then be considered in light of other factors  
15 to determine whether an assertion of personal jurisdiction  
16 would comport with fair play and substantial justice. Minimum  
17 contacts is the threshold analysis. It must come first.

18 Mr. Carter mentioned the Pugh case. I stand  
19 corrected, your Honor, it did involve certain individual  
20 defendants over whom the court asserted personal jurisdiction.  
21 It doesn't say so in the opinion, but I assume that these were  
22 the actual terrorists who planted the bomb. And that case is a  
23 district court case, it is on appeal. It is clear to us, and  
24 we discuss it in our briefs, that to the extent Judge Jackson  
25 in that case relied on a foreseeability analysis, it's directly

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1 contrary to the Supreme Court's holding in Burger King. The  
2 case that is much more on point here is the one that I  
3 mentioned in my opening presentation, the Ungar case out of the  
4 District of Rhode Island, which the plaintiffs failed to  
5 mention in their briefs, and, notably, they failed to mention  
6 it in their presentation today.

7 Finally, your Honor, Mr. Motley referred to the recent  
8 Kilburn decision in the D.C. Circuit, and he seems to suggest  
9 that the proximate cause standard that was discussed there  
10 under the noncommercial tort exception to the FSIA should  
11 somehow be implied in the context of personal jurisdiction. In  
12 fact, your Honor, the very opposite is true. Congress intended  
13 for the foreign sovereign immunity exceptions to encompass a  
14 minimum contacts analysis under the due process clause. So  
15 what that means in this case is that if Prince Sultan's alleged  
16 private conduct does not give rise to personal jurisdiction for  
17 all the reasons we've been talking about today, that same exact  
18 conduct, the giving of a charitable contributions to a  
19 nondesignated perfectly legal charity, cannot give rise to  
20 personal jurisdiction over Prince Sultan if it's undertaken in  
21 his official as opposed to personal capacity. He's still  
22 entitled to due process protections.

23 Thank you, your Honor.

24 THE COURT: Thank you, sir.

25 Anyone else?

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1 MR. LUTZ: Yes, your Honor. Good afternoon, your  
2 Honor. Christopher Lutz for the estate of Mohammad Aljomaih.

3 When I addressed the Court this morning, I observed  
4 that when the plaintiffs have been called to account for the  
5 specificity of their jurisdictional allegations, they have  
6 tended to ignore specifics as to specific defendants and to  
7 launch off into a set piece speech, and we heard that from  
8 Mr. Motley this morning.

9 Now, as to Mr. Aljomaih, my interest was piqued when  
10 Mr. Carter said that the complaints for each defendant  
11 specifically allege how they aided and abetted or were involved  
12 in the conspiracy. You remember, Mr. Aljomaih is the  
13 88-year-old now dead businessman as to whom there are no  
14 allegations in the complaints. When I listened to what  
15 Mr. Carter had to say and he stopped, there was nothing about  
16 Mr. Aljomaih.

17 The plaintiffs have been, through months of briefing  
18 and minutes and hours of argument, asked to explain how the few  
19 specific allegations they make get close to sufficiency for  
20 personal jurisdiction, and they simply haven't done it. In  
21 fact, they had so little to say about some of the defendants  
22 that they spent time referring to a man named Batterjee whom  
23 none of the defense counsel that have spoken this morning  
24 represent. They have had nothing to say about Mr. Aljomaih.  
25 What matters for personal jurisdiction purposes is their

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1 specific allegations on that point and whether they establish a  
2 *prima facie* case of personal jurisdiction, not these  
3 generalized allegations that Mr. Motley went through this  
4 morning, and for Mr. Aljomaih, they said nothing.

5 Now, a final point, your Honor, on the Golden Chain,  
6 the issue as to which you and Mr. Motley had a lively exchange  
7 this morning. Mr. Motley said at the end of the back and forth  
8 with you that they didn't really know what it was, but they  
9 wished they did. Preliminarily, that's a remarkable basis in  
10 the case of Mr. Aljomaih, a document that they don't quite know  
11 what it is to accuse him of being an accessory to mass murder,  
12 but that's where we stand right now.

13 I do want -- you ask about, you didn't ask so much,  
14 your Honor, as a question of discovery to the Golden Chain came  
15 up, and I want to address that as to Mr. Aljomaih. To begin  
16 with, for Mr. Aljomaih, the Jazini standards for jurisdictional  
17 discovery are not met, but there's two other problems. One is  
18 a practical one, the man is dead. Mr. Motley says that this  
19 Golden Chain document was perhaps authored in 1988. So that  
20 discovery would somehow have to be trying to probe into the  
21 supposed intent 16 years ago of a man who is no longer alive.  
22 It seems to me not practical, besides being not legally  
23 justified.

24 And the final point, of course, is that, as I said  
25 this morning, Mr. Aljomaih's full name is not on the Golden

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1 Chain, only his last name and only a city where he never lived.  
2 A city 600 miles from where he lived for 60 years. The  
3 plaintiffs had the opportunity this morning, your Honor, and  
4 through this afternoon, and they said nothing about Mr.  
5 Aljomaih. What they have said in their briefs is insufficient  
6 and there is no personal jurisdiction over him.

7 Thank you.

8 THE COURT: Thank you, sir.

9 Anyone else?

10 MS. BERNABEI: Yes, your Honor.

11 THE COURT: Oh, by all means.

12 MS. BERNABEI: I'd just like to echo some of the  
13 things that Mr. Lutz said.

14 Again, Mr. Motley claims that the defendants did not  
15 address the general allegations made against awful them. In  
16 fact, that's not what this Court is looking at. In specific  
17 jurisdiction analysis, both Calder and PDK Labs in this circuit  
18 made clear that you have to look at the specific contacts, the  
19 specific actions, the specific defendants.

20 I'd like to just for a moment, even though we don't  
21 believe this is the standard, look at the standard the  
22 plaintiffs have put forth for holding a defendant in a personal  
23 jurisdiction. It's a foreseeability standard that they claim  
24 is supported under Burger King and is somewhat mentioned in the  
25 Helicopteros Nacionales case, two Supreme Court cases. There

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1 is absolutely no way that the plaintiffs can show that our  
2 defendant, Mr. Al-Husaini, that it was foreseeable that if he  
3 did make a contribution of a nature that the defendants say he  
4 made or may have made, the plaintiffs say he made or had made  
5 in 1988, that it was foreseeable that that would cause harm in  
6 the United States in 2001. There is simply no way they can  
7 make that claim.

8 I'd also like to, again, echo the point about Jazini.  
9 There is, Mr. Motley suggested that discovery would be  
10 appropriate to help establish personal jurisdiction over these  
11 defendants. When there is no factual basis to assert personal  
12 jurisdiction, there's not a *prima facie* case, you have a  
13 document that is, you know, basically inscrutable, there is no  
14 basis for a *prima facie* case on jurisdiction, there is no basis  
15 to allow jurisdiction, excuse me, allow discovery on personal  
16 jurisdiction. Certainly in the case in chief against other  
17 defendants, maybe they can probe this document and find out  
18 more about it, but it certainly does not present a basis for  
19 discovery in personal jurisdiction against Mr. Al-Husaini.

20 THE COURT: Thank you, ma'am.

21 MR. LIEBMAN: Your Honor, Ron Liebman for National  
22 Commercial Bank.

23 Mr. Motley asks for discovery against NCB, but he  
24 cites nothing in support of his request except a portion of  
25 Judge Robertson's opinion dealing with Al Rajhi Bank. That

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1 citation is off the point. As Mr. Cohen says, first of all,  
2 the plaintiffs are not entitled to discovery to make the prima  
3 facie case, but at page 97, at 274 F.Supp. 2d, the portion of  
4 the Judge Robertson decision that Mr. Motley cites to dealt not  
5 with specific jurisdiction but with general jurisdiction or the  
6 concept of doing business.

7 What Judge Robertson dealt with were allegations that  
8 Al Rajhi had certain contacts with the United States. I have  
9 dealt with the issue or the question of NCB and contacts with  
10 the United States. There were none. And so, the plaintiffs  
11 have not made a case for jurisdictional discovery.

12 With respect to Mr. Carter's comments, your Honor,  
13 concerning charitable contributions, there is no allegation in  
14 the complaints that NCB made contributions to charities that  
15 have been named as terrorist organizations. As the Seventh  
16 Circuit cited or held in Boim, funding charities simpliciter is  
17 not enough for a personal jurisdiction. There are no  
18 allegations in the complaint of facts to support knowledge and  
19 intent on the part of NCB.

20 Now, with respect to Mr. Carter's comments about  
21 Kahlid Bin Mahfouz and his role at NCB, Judge Robertson also  
22 dealt with this point, again with respect to Al Rajhi Bank.  
23 Judge Robertson held that without an allegation of scope of  
24 employment, it is not permissible to hold against the bank  
25 actions, if any, of the bank's CEO. With respect to scope of

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1 employment, the plaintiff -- and Kahlid Bin Mahfouz, the  
2 plaintiffs themselves allege that Mr. Bin Mahfouz had many  
3 different roles. They allege he was the founder of the Blessed  
4 Relief Foundation, or Muwafaq. They've alleged that he was an  
5 investor in businesses, including the Saudi Economic and  
6 Development Company, the Nimir Petroleum, and that he was  
7 executive not just at National Commercial Bank but at another  
8 bank as well, BCCI. So he had lots of different roles, and  
9 there's no allegation that anything they claim Mr. Bin Mahfouz  
10 did he did within the scope of his employment at the time as  
11 the CEO of National Commercial Bank.

12 And, finally, your Honor, with respect to the claims  
13 against Mr. Kahlid Bin Mahfouz, an English court, this year in  
14 July of 2004, entered a judgment that declared as false the  
15 allegation that as chairman of NCB, Mr. Bin Mahfouz diverted  
16 funds or otherwise supported Osama Bin Laden or Al Qaeda. Now,  
17 the Court, of course, is not bound by that finding, those  
18 findings of fact and that judgment, but under principles of  
19 international comity, it is entitled to considerable deference.

20 Thank you, your Honor.

21 THE COURT: Thank you, sir.

22 MR. KAHN: Your Honor, Peter Kahn, on behalf of  
23 Abdulrahman Bin Mahfouz, the son of Kahlid Bin Mahfouz you've  
24 been hearing about from Mr. Liebman. Three very brief points.

25 Mr. Carter alleged that I wasn't playing it straight

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1 with the Court this morning when I stated that Muwafaq has not  
2 been listed by the United States Government as a specially  
3 designated terrorist organization. He cites apparently an  
4 alleged Department of Treasury press statement to the contrary.  
5 We've never seen such a document, but what we have seen is the  
6 official record of the United States Government, which we cite  
7 to this Court on the Web site, and that is given at pages 3 and  
8 4 of our reply brief. That is the official record of the  
9 United States Government, Muwafaq is not a specially designated  
10 terrorist organization.

11 Second, I believe Mr. Carter claimed that we  
12 misunderstood the basis for plaintiffs' claim of personal  
13 jurisdiction against Abdulrahman Bin Mahfouz. If I understood  
14 his argument, he said they were not relying on the acts of the  
15 corporations with which he's been involved but rather on his  
16 individual acts, and yet he turned around and said we are  
17 relying on the fact that he was an agent of these corporations.

18 Your Honor, which one is it? If it's in his  
19 individual capacity, they have made no allegations of any  
20 personal contacts with the United States. And if it's based on  
21 the acts of the corporation, they made no allegations that he  
22 participated in, ratified, or even knew of the alleged  
23 wrongdoing. They have simply not established personal  
24 jurisdiction against him.

25 Finally, your Honor, you may recall that at the end of  
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1 Mr. Motley's remarks this morning, he said that certain  
2 defendants who had argued earlier in the day should not be  
3 heard to complain that there were few, if any, specific  
4 allegations in the complaint made against them. And I believe  
5 I was one who made such a charge. He said that the general  
6 allegations in the complaint against all the defendants should  
7 suffice.

8 Well, your Honor, that argument is not well founded.  
9 It's contrary to well established law, including at least three  
10 cases here in the Southern District of New York. We cite them  
11 at pages 1 to 3 of our reply brief at footnote 1 therein, and  
12 we respectfully ask the Court to take a look at those cases.  
13 Even the simplified pleading requirements of Rule 8 require  
14 that plaintiffs plead that Mr. Bin Mahfouz himself and not  
15 merely, quote/unquote, all defendants engaged in specific  
16 conduct giving rise to plaintiffs' claims.

17 Thank you, your Honor.

18 THE COURT: Thank you, sir.

19 MR. GAUCH: Your Honor, James Gauch on behalf of the  
20 SBG defendants. I fear I'm on borrowed time. I'll be very  
21 brief.

22 Simply two points. First to amplify what Mr. Cooper  
23 said in response to the plaintiffs' reliance on the Pugh case  
24 for the proposition that FSIA standards of due process should  
25 be imported in the ATA. There's also another decision out of

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2 the District of Columbia, more recent, decided earlier this  
3 year, Biton, v. Palestine Interim Self-government, 310  
4 F.Supp.2d 172, which, at page 178, adopts exactly this  
5 position: "The court notes that the differences between the  
6 ATA and FSIA are too great for the common focus on  
7 antiterrorism to allow cross-pollination on this issue." And  
8 therefore the Court declined to extend Flatow and Rein, the  
9 principles of those cases to ATA claims, filed against nonstate  
defendants.

10 Second point, in several hours of argument, there are  
11 occasional flashes of insight. One of these, I think, came at  
12 the beginning of Mr. Motley's presentation when he complained  
13 that the defendants were claiming that no one should be in this  
14 court, "not even people whose name is Bin Laden."

15 That to me is not an extraordinary proposition. I  
16 think the other defendants here today would agree with me today  
17 that this case isn't about names and about vague associations;  
18 it's about specific factual conduct. It takes much more than a  
19 name or an association unspecified in time and place to force  
20 foreign organizations or foreign individuals to defend  
21 themselves in a U.S. court. The plaintiffs have failed to  
22 supply that, and therefore, we urge that you grant a motion to  
23 dismiss.

24 Thank you.  
25

THE COURT: Thank you, sir.

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1 MR. MOTLEY: Your Honor, Ron Motley. May I have one  
2 minute? We didn't take our 90, Judge.

3 THE COURT: You can have a minute.

4 MR. MOTLEY: Thank you, your Honor.

5 Your Honor, Rule 8 does not require a 10,000-page  
6 complaint. Thank you.

7 THE COURT: All right.

8 What time are we on Thursday? Thank you, all, very  
9 much. I'll reserve decision and I'll see you all, I believe  
10 it's 10:00 on Thursday morning.

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